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Attorneys for Creditor
 CATHAY BANK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE:

MARTIFER AURORA SOLAR, LLC, a
 Nevada limited liability company,

- ☒ Affects Martifer Aurora Solar, LLC
☒ Affects Martifer Solar USA, Inc.
☐ Affects All Debtors

Case No. BK-S-14-10355-abl
 and BK-S-14-10357-abl

Jointly Administered under
 Case No. BK-S-14-10355-abl

Chapter 11

DATE: OST Requested
TIME: OST Requested

MOTION FOR RECONSIDERATION OF FORM OF CASH COLLATERAL ORDER¹

Secured Creditor Cathay Bank (the "Bank") hereby seeks an Order of the Court
 reconsidering its entry of the Interim Order Pursuant to 11 U.S.C. §§ 361, 362 and 363 and Fed.
 R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors to Use Cash Collateral and Provide

¹ Refers to the Interim Order Pursuant to 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors to Use Cash Collateral and Provide Adequate Protection; (II) Granting Related Relief; and (III) Scheduling Final Hearing. [Doc. No 107].

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Adequate Protection; (II) Granting Related Relief; and (III) Scheduling Final Hearing, filed at 3:21 p.m. on February 5, 2014 (the “**Interim Cash Collateral Order**”) for the reasons set forth in the following papers each of which are incorporated herein by reference:

1. The Bank’s Statement of Objections to Debtors’ Proposed Interim Order Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors To Use Cash Collateral And Provide Adequate Protection; (II) Granting Related Relief; And (III) Scheduling Final Hearing [Dkt. 110] (the “**Bank’s Objection to Cash Collateral Order**”);

2. The Declaration of Natalie Cox in support of the Bank’s Objection to the Cash Collateral Order [Dkt. 111] (the “**Cox Declaration**”);

3. The Bank’s proposed alternative order [Dkt. 110, Exhibit 3]; and

4. The Statement Of Objection Of The United States Trustee To The Debtors’ Proposed Interim Order (i) Authorizing Debtors To Use Cash Collateral And Provide Adequate Protection; (ii) Granting Related Relief; And (iii) Scheduling Final Hearing [Dkt 114].

As set forth in the Cox Declaration, and as set forth in Local Bankruptcy Rule 9021,² the Bank and the U.S. Trustee’s counsel had until and including February 5, 2014, the fifth business day after receipt of the Debtor’s proposed order, within which to file a Statement of Objections to the form of the Debtor’s Interim Cash Collateral Order. Both the Bank and the U.S. Trustee’s office filed their objections to the Interim Cash Collateral Order within the allotted time. *See* Dkts. 110, 111 and 114].

Because the time begins to run on the deadline for a party to object to a proposed order on the date the party receives the pertinent document (Wednesday, January 29, 2014 in this

² Local Rule 9021(b)(2) states in pertinent part:

(2) Unless the court orders otherwise, parties will have three (3) business days from receiving proposed orders to communicate their approval or disapproval to the transmitting counsel.

(A) If disapproved, the disapproving party will have **five (5) business days from receiving the document** to serve and file with the court a detailed statement of objections and an alternate proposal for the document.

(B) Any response to the objection must be filed within five (5) business days after the objection is lodged.

LR 9021 (emphasis added).

case), a date the Court is not necessarily privy to, it is likely that the Court was unaware that parties still had time to object to the Interim Cash Collateral Order when the Court entered the Order. Moreover, because the version of the Order entered by the Court does not appear to include the Bank's counsel's disapproval and the U.S. Trustee's counsel's disapproval of the form of the order as requested, the Court was also likely unaware that the Interim Cash Collateral Order did not meet with all counsel's approval. See the Cox Declaration, Exhibit 1, and a copy of the pertinent email exchange wherein the Bank's counsel approved the use of her electronic signature noting "disapproved" on the order attached hereto as **Exhibit 1** for reference.

For these reasons, and because the Order in its current form does not reflect the Courts' decision and will allow the Debtors' to appropriate all of the Bank's cash collateral for payment of professionals alone and not the maintenance of the companies, the Bank respectfully requests that the Court consider its objections to the form of the Interim Cash Collateral Order and amend the order accordingly.

DATED this 6th day of February, 2014.

KOLESAR & LEATHAM.

By: /s/ Natalie M. Cox, Esq.

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CATHAY BANK

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CERTIFICATE OF SERVICE

1. On February 6, 2014, I served the following documents:

A. **Motion For Reconsideration Of Form Of Cash Collateral Order.**

2. I served the above-named document(s) by the following means to the persons as listed below:

(Check all that apply)

☒ a. **ECF System (You must attach the "Notice of Electronic Filing," or list all persons and addresses and attach additional paper if necessary)**

BRETT A. AXELROD on behalf of Debtor MARTIFER AURORA SOLAR, LLC
baxelrod@foxrothschild.com, pchlum@foxrothschild.com;ldupree@foxrothschild.com

BRETT A. AXELROD on behalf of Debtor MARTIFER SOLAR USA, INC.
baxelrod@foxrothschild.com, pchlum@foxrothschild.com;ldupree@foxrothschild.com

BRETT A. AXELROD on behalf of Jnt Admin Debtor MARTIFER SOLAR USA, INC.
baxelrod@foxrothschild.com, pchlum@foxrothschild.com;ldupree@foxrothschild.com

BRETT A. AXELROD on behalf of Plaintiff MARTIFER AURORA SOLAR, LLC
baxelrod@foxrothschild.com, pchlum@foxrothschild.com;ldupree@foxrothschild.com

BRETT A. AXELROD on behalf of Plaintiff MARTIFER SOLAR USA, INC.
baxelrod@foxrothschild.com, pchlum@foxrothschild.com;ldupree@foxrothschild.com

CARLETON R. BURCH on behalf of Creditor Hanover Insurance Company
crb@amclaw.com, car@amclaw.com;sxc@amclaw.com;sdb@amclaw.com

DAWN M. CICA on behalf of Debtor MARTIFER AURORA SOLAR, LLC
dcica@foxrothschild.com, amwilson@foxrothschild.com

DAWN M. CICA on behalf of Debtor MARTIFER SOLAR USA, INC.
dcica@foxrothschild.com, amwilson@foxrothschild.com

DAWN M. CICA on behalf of Jnt Admin Debtor MARTIFER SOLAR USA, INC.
dcica@foxrothschild.com, amwilson@foxrothschild.com

NATALIE M. COX on behalf of Defendant CATHAY BANK
ncox@klnevada.com,
bankruptcy@klnevada.com;kdunn@klnevada.com;ncox@ecf.inforuptcy.com

NATALIE M. COX on behalf of Interested Party CATHAY BANK
ncox@klnevada.com,
bankruptcy@klnevada.com;kdunn@klnevada.com;ncox@ecf.inforuptcy.com

JENNIFER V. DORAN on behalf of Creditor EPG SOLAR LLC
jdoran@hinckleyallen.com, calirm@hinckleyallen.com

MICHAEL GERARD FLETCHER on behalf of Interested Party CATHAY BANK
mletcher@frandzel.com, efiling@frandzel.com,shom@frandzel.com

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1 RANDOLPH L. HOWARD on behalf of Interested Party CATHAY BANK
2 rhoward@klnevada.com,
3 ckishi@klnevada.com;bankruptcy@klnevada.com;ckishi@ecf.inforuptcy.com

3 ROBERT R. KINAS on behalf of Creditor CALIFORNIA CEC, LP
4 rkinas@swlaw.com,
5 imoth@swlaw.com;mfull@swlaw.com;heriffith@swlaw.com;nunzueta@swlaw.com;docke

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☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ **d. By direct email (as opposed to through the ECF System)**
(List persons and email addresses. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **e. By fax transmission (List persons and fax numbers. Attach additional paper if necessary)**

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ **f. By messenger (List persons and addresses. Attach additional paper if necessary)**

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. *(A declaration by the messenger must be attached to this Certificate of Service).*

I declare under penalty of perjury that the foregoing is true and correct.

Signed on (date): February 6, 2014.

/s/ Kristina R. Cole
 DECLARANT

EXHIBIT 1

Natalie M. Cox

From: Cica, Dawn M. <dcica@foxrothschild.com>
Sent: Tuesday, February 04, 2014 1:50 PM
To: Natalie M. Cox; Bloom, J. Michal (USTP) (J.Michal.Bloom@usdoj.gov)
Subject: FW: In re Martifer, BK-14-10355abl
Attachments: Martifer order uploaded.msg

Natalie, this notice is just a redline of the language of the order against the proposed order filed with the motion.

I did want to assure you that the actual order uploaded for the judge's signature noted your disapproval (copy attached).

However we are doing an errata anyway and I will gladly circle the "Disapproval" and re-attach the order when we file the errata. DC

From: Chlum, Patricia
Sent: Tuesday, February 04, 2014 1:36 PM
To: Cica, Dawn M.; Wilson, Monica
Cc: Rustia Moore, Micaela
Subject: FW: In re Martifer, BK-14-10355abl

From: Natalie M. Cox [<mailto:ncox@klnevada.com>]
Sent: Tuesday, February 04, 2014 1:33 PM
To: Chlum, Patricia
Cc: Axelrod, Brett A.; Rustia Moore, Micaela; lmj@gfjlawfirm.com; mea@amclaw.com; rollin.g.thorley@irscounsel.treas.gov; Ability to; Bella Energy; Cathay Bank; E Light Electric; Martifer Construcoes Metalomecanicas (nuno.figueiredo@martifer.com); Martifer Solar USA; Pfoosi and Sons; Shea Labagh Dobberstein; AECOM; Charles M. Forman, TTEE for SatCon; CLP; CreoTecc; EPG Solar; EPG Solar; Hinckley Allen; Martifer Inovacao E Gestao; Northern Land; Pam Woodworth (pwoodworth@sanbornhead.com); PanelClaw; PanelClaw2; Patriot Solar; SatCon Technology; Schletter; Schletter Counsel; Schletter Counsel; Security Construction (smorris@security-construction.com); Solar Optimum; Stoel Rives; Stones River; Talesun Solar; Triple Crown; Bulkley Richardson for Patriot Solar & Northern Land; Randolph L. Howard; Clean Energy and California CEC; Clean Energy2; Clean Energy3; Hinckleyallen for EPG Solar; jritzenberg@hinckleyallen.com; Michael Fletcher; Sam Schwartz; Trustee (j.michal.bloom@usdoj.gov); 'Reed S. Waddell'; Kristina R. Cole
Subject: RE: In re Martifer, BK-14-10355abl

Patricia,

I noticed that the attached draft redline of the Order does not note Cathay Bank's or the US Trustee's counsel's disapproval of the form of the order. Please have this corrected immediately. Thank you.

Natalie

Natalie M. Cox, Esq.
Shareholder



P: 702.362.7800 F: 702.362.9472
Web: www.klnevada.com Bio: [Attorney Bio](#)

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From: Chlum, Patricia [<mailto:pchlum@foxrothschild.com>]

Sent: Tuesday, February 04, 2014 1:17 PM

To: lmj@gfjlawfirm.com; mea@amclaw.com; rollin.g.thorley@irsounsel.treas.gov; Ability to; Bella Energy; Cathay Bank; E Light Electric; Martifer Construcoes Metalomecanicas (nuno.figueiredo@martifer.com); Martifer Solar USA; Pfoosi and Sons; Shea Labagh Dobberstein; AECOM; Charles M. Forman, TTEE for SatCon; CLP; CreoTecc; EPG Solar; EPG Solar; Hinckley Allen; Martifer Inovacao E Gestao; Northern Land; Pam Woodworth (pwoodworth@sanbornhead.com); PanelClaw; PanelClaw2; Patriot Solar; SatCon Technology; Schletter; Schletter Counsel; Schletter Counsel; Security Construction (smorris@security-construction.com); Solar Optimum; Stoel Rives; Stones River; Talesun Solar; Triple Crown; Bulkley Richardson for Patriot Solar & Northern Land; Randolph L. Howard; Natalie M. Cox; Clean Energy and California CEC; Clean Energy2; Clean Energy3; Hinckleyallen for EPG Solar; jritzenberg@hinckleyallen.com; Michael Fletcher; Sam Schwartz; Trustee (j.michal.bloom@usdoj.gov)

Cc: Axelrod, Brett A.; Rustia Moore, Micaela

Subject: In re Martifer, BK-14-10355abl

Attached is the Notice of Filing Redline of Debtors' Interim Cash Budget [Dkt. 88]

Patricia Chlum

Paralegal

Fox Rothschild LLP

3800 Howard Hughes Pkwy

Suite 500

Las Vegas, NV 89169

(702) 699-5909 - direct

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helpdesk@foxrothschild.com. Also, please mail a hardcopy of the e-mail to Fox Rothschild LLP, 2000 Market Street, Philadelphia PA 19103-3222 via the U.S. Postal Service. We will reimburse you for all expenses incurred. Thank you.

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Natalie M. Cox

From: Cica, Dawn M. <dcica@foxrothschild.com>
Sent: Tuesday, February 04, 2014 11:14 AM
To: Natalie M. Cox
Subject: RE: Martifer Solar Aurora, LLC & Martifer Solar USA, Inc. - Proposed Cash Collateral Order and Confidentiality Agreement

Thanks Natalie.

From: Natalie M. Cox [mailto:ncox@knevada.com]
Sent: Tuesday, February 04, 2014 10:51 AM
To: Cica, Dawn M.
Cc: Rustia Moore, Micaela; Michael Fletcher; Reed S. Waddell (rwaddell@frandzel.com); sam@schwartzlawyers.com; 'nschultzesq@gmail.com'; Bloom, J. Michal (USTP); Kristina R. Cole; Wilson, Monica; Axelrod, Brett A.
Subject: RE: Martifer Solar Aurora, LLC & Martifer Solar USA, Inc. - Proposed Cash Collateral Order and Confidentiality Agreement

Dawn,

You may attach my e-signature as "disapproved". Thank you.

Natalie

Natalie M. Cox, Esq.
Shareholder



ATTORNEYS AT LAW

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From: Cica, Dawn M. [mailto:dcica@foxrothschild.com]
Sent: Tuesday, February 04, 2014 10:49 AM
To: Natalie M. Cox; Axelrod, Brett A.
Cc: Rustia Moore, Micaela; Michael Fletcher; Reed S. Waddell (rwaddell@frandzel.com); sam@schwartzlawyers.com; 'nschultzesq@gmail.com'; Bloom, J. Michal (USTP); Kristina R. Cole; Wilson, Monica
Subject: RE: Martifer Solar Aurora, LLC & Martifer Solar USA, Inc. - Proposed Cash Collateral Order and Confidentiality Agreement

Natalie and Michal, do you want to send a signature page or do I have your permission to affix your electronic signature under the indication "Disapproved"?

Thanks

Dawn M. Cica
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dcica@foxrothschild.com
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From: Natalie M. Cox [<mailto:ncox@knevada.com>]
Sent: Tuesday, February 04, 2014 9:58 AM
To: Axelrod, Brett A.
Cc: Rustia Moore, Micaela; Michael Fletcher; Cica, Dawn M.; Reed S. Waddell (rwaddell@frandzel.com); sam@schwartzlawyers.com; 'nschultzesq@gmail.com'; Bloom, J. Michal (USTP); Kristina R. Cole
Subject: RE: Martifer Solar Aurora, LLC & Martifer Solar USA, Inc. - Proposed Cash Collateral Order and Confidentiality Agreement

Brett,

I got your voicemail last night regarding a confidentiality agreement. Please forward whatever agreement you would like for the bank to consider. Also, please advise if/when you have lodged the proposed cash collateral order so that we can timely lodge our statement of opposition pursuant to LR 9021. Thank you.

Natalie

Natalie M. Cox, Esq.
Shareholder



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Web: www.knevada.com Bio: [Attorney Bio](#)
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